

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Case No.: 3:07-cv-00011 (RJC-DLH)**

Elena M. David, Arleen J. Stach,)	
Victor M. Hernandez)	
)	
Plaintiffs,)	
v.)	
)	
J. Steele Alphin, et al.,)	
)	
Defendants.)	

**DECLARATION OF SHANNON M. BARRETT IN SUPPORT OF MEMORANDUM OF
LAW IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OF
STATUTE OF LIMITATIONS GROUNDS**

I, Shannon M. Barrett, being duly sworn on my oath, declare and state:

1. I am more than 18 years of age, am capable of making this declaration, have personal knowledge of the matters set forth in it, which are true and correct, and if called to testify to the facts stated herein, I could and would do so competently.
2. I am an attorney at O'Melveny & Myers, LLP, counsel for the Bank of America Defendants in the above matter. I have personal knowledge of the authenticity of the following.
3. Attached as Exhibit 1 is a true and correct copy of the Form 5500 prepared for the Plan for the year 2000 (BOA-DAVID2-00138927-94), as O'Melveny & Myers LLP obtained it from the United States Department of Labor.
4. Attached hereto as Exhibit 2 are true and correct copies of the Forms 5500 prepared for the Plan from 1998 through 2008, as O'Melveny & Myers LLP obtained them from the United States Department of Labor. They include the following years:
 - 1998 (BOA-DAVID 01181994-2055)

- 1999 (BOA-DAVID 01182057-135)
- 2000 (BOA-DAVID2-00138927-94)
- 2001 (BOA-DAVID2-00138995-9067)
- 2002 (BOA-DAVID2-00139068-150)
- 2003 (BOA-DAVID2-00139151-293)
- 2004 (BOA-DAVID2-00139294-331)
- 2005 (BOA-DAVID2-00139332-98)
- 2006 (BOA-DAVID2-00139399-451)
- 2007 (BOA-DAVID2-00139452-501)
- 2008 (BOA-DAVID2-00139502-49).

5. Attached hereto as Exhibit 3 are true and correct copies of account statements for Plaintiff Elena David, as they were produced to O'Melveny & Myers LLP. They include quarterly statements for the periods ending:

- March 31, 2000 (DAVID00301-08)
- June 30, 2000 (DAVID00316-19)
- September 30, 2000 (DAVID00375-81)
- December 31, 2000 (DAVID00382-91)
- March 31, 2001 (DAVID00393-400)
- June 30, 2001 (DAVID00401-15)
- September 30, 2001 (DAVID00416-23)
- December 31, 2001 (DAVID00424-33)
- March 31, 2002 (DAVID00437-46)
- June 30, 2002 (DAVID00447-56)

- September 30, 2002 (DAVID00457-66)
- December 31, 2002 (DAVID00473-82)
- March 31, 2003 (DAVID00483-92)
- June 30, 2003 (DAVID00495-98)
- September 30, 2003 (DAVID00501-10)
- December 31, 2003 (DAVID00511-14)
- March 31, 2004 (DAVID00523-28)
- June 30, 2004 (DAVID00531-37)
- September 30, 2004 (DAVID00567-69).

6. Attached hereto as Exhibit 4 is a true and correct copy of Plaintiff Elena David's December 31, 2000, quarterly statement (DAVID00382-91), as it was produced to O'Melveny & Myers LLP.

7. Attached hereto as Exhibit 5 are true and correct copies of account statements for Plaintiff Victor Hernandez, as they were produced to O'Melveny & Myers LLP. They include statements for the quarter ending December 31, 2005 (HERNZ000001-03), for the period June 14, 2005, through June 13, 2007 (HERNZ000005-10), and for the period February 26, 2007, through February 25, 2009 (HERNZ000017-24).

8. Attached hereto as Exhibit 6 is a true and correct copy of Plaintiff Arleen Stach's December 31, 2000, quarterly statement (STACH00291-92), as it was produced to O'Melveny & Myers LLP.

9. Attached hereto as Exhibit 7 are true and correct copies of account statements for Plaintiff Arleen Stach, as they were produced to O'Melveny & Myers LLP. They include statements for the periods ending:

- March 31, 2000 (STACH00268-276)
- September 30, 2000 (STACH00283-290)
- December 31, 2000 (STACH00291-292)
- March 31, 2001 (STACH00230-238)
- June 30, 2001 (STACH00239-247)
- September 30, 2001 (STACH00248-256)
- December 31, 2001 (STACH00257-267)
- March 31, 2002 (STACH00184-194)
- June 30, 2002 (STACH00195-205)
- September 30, 2002 (STACH00206-218)
- December 31, 2002 (STACH00219-229)
- March 31, 2003 (STACH00139-149)
- June 30, 2003 (STACH00150-161)
- September 30, 2003 (STACH00162-172)
- December 31, 2003 (STACH00173-183)
- March 31, 2004 (STACH00107-113)
- June 30, 2004 (STACH00114-121)
- September 30, 2004 (STACH00122-129)
- December 31, 2004 (STACH00130-138)
- March 31, 2005 (STACH00065-71)
- June 30, 2005 (STACH00072-80)
- September 30, 2005 (STACH00081-93)
- December 31, 2005 (STACH00094-106)

- March 31, 2006 (STACH00001-18)
- June 30, 2006 (STACH00021-34)
- September 30, 2006 (STACH00035-49)
- December 31, 2006 (STACH00050-64)
- March 31, 2009 (STACH001530-40)
- June 30, 2009 (STACH001855-64)
- September 30, 2009 (STACH001755-64).

10. Attached hereto as Exhibit 8 is a true and correct copy of a booklet entitled “Retirement Plans Investment Options” reporting fund performance as of March 15, 2000 (DAVID00359-71), as Plaintiff Elena David produced it to O’Melveny & Myers LLP.

11. Attached hereto as Exhibit 9 is a true and correct copy of a booklet entitled “Retirement Plans Investment Options” reporting fund performance as of September 30, 2001 (STACH000549-50), as Plaintiff Arleen Stach produced it to O’Melveny & Myers LLP.

12. Attached hereto as Exhibit 10 are true and correct copies of excerpts from the Deposition of Elena M. David in the above-captioned matter.

13. Attached hereto as Exhibit 11 are true and correct copies of excerpts from the Deposition of Arleen J. Stach in the above-captioned matter.

14. Attached hereto as Exhibit 12 are true and correct copies of excerpts from the Deposition of Victor Hernandez in the above-captioned matter.

15. Attached hereto as Exhibit 13 is a true and correct copy of the Memorandum and Order of the court in *Figas v. Wells Fargo & Co.*, Civ. No. 08-4546 (D. Minn. Apr. 6, 2010) (Dkt. # 150), as retrieved from PACER on December 21, 2010.

16. Attached hereto as Exhibit 14 is a true and correct copy of the Nations Funds Stock Funds Annual Report for the Year Ended March 31, 2001, as retrieved from the Securities and Exchange Commission's EDGAR database on December 21, 2010.

17. Attached hereto as Exhibit 15 is a true and correct copy of the Deposition of David G. MacKenzie in the above-captioned matter.

18. Attached hereto as Exhibit 16 is a true and correct copy of a letter from David MacKenzie to Bank of America, Trustee of the 401(k) Plan, dated April 14, 2000 (MACKENZIE 000003-000005), authenticated by David MacKenzie in his deposition at 76:1-9. The MacKenzie Deposition is attached as Exhibit 15, noted in paragraph 17 of this declaration.

19. Attached hereto as Exhibit 17 is a true and correct copy of a letter from David MacKenzie to Secretary, Employee Benefit Administrative Committee, dated April 24, 2000 (MACKENZIE 000006), authenticated by David MacKenzie in his deposition at 109:8-16. The MacKenzie Deposition is attached as Exhibit 15, noted in paragraph 17 of this declaration.

20. Attached hereto as Exhibit 18 is a true and correct copy of a letter from Susan Kirk to Arthur Colas, dated July 10, 2000 (MACKENZIE 000018-000019), authenticated by David MacKenzie in his deposition at 189:10-19. The MacKenzie Deposition is attached as Exhibit 15, noted in paragraph 17 of this declaration.

21. Attached hereto as Exhibit 19 is a true and correct copy of a letter from Arthur Colas to David MacKenzie, dated May 4, 2000 (MACKENZIE 000008-000009), authenticated by David MacKenzie in his deposition at 117:9-16. The MacKenzie Deposition is attached as Exhibit 15, noted in paragraph 17 of this declaration.

22. Attached hereto as Exhibit 20 is a true and correct copy of a letter from Arthur Colas to Susan Kirk, dated August 11, 2000 (MACKENZIE 000020-000021), authenticated by

David MacKenzie in his deposition at 199:9-200:2. The MacKenzie Deposition is attached as Exhibit 15, noted in paragraph 17 of this declaration.

23. Attached hereto as Exhibit 21 is a true and correct copy of a letter from David MacKenzie to Dana Farber, dated May 18, 2000 (MACKENZIE 000010-000013), authenticated by David MacKenzie in his deposition at 118:20-119:12. The MacKenzie Deposition is attached as Exhibit 15, noted in paragraph 17 of this declaration.

24. Attached hereto as Exhibit 22 is a true and correct copy of a letter from Arthur Colas to David MacKenzie, dated June 13, 2000 (MACKENZIE 000015-000017), authenticated by David MacKenzie in his deposition at 168:19-169:3. The MacKenzie Deposition is attached as Exhibit 15, noted in paragraph 17 of this declaration.

25. Attached hereto as Exhibit 23 are true and correct copies of excerpts from the Deposition of Arthur Colas in the above-captioned matter.

26. Attached hereto as Exhibit 24 is a true and correct copy of a letter from Michael Johnston, et al., to Lester Ranson, dated November 27, 2000 (BOA-DAVID2-00376594-00376600), authenticated by Arthur Colas in his deposition at 250:1-11. The Colas Deposition excerpts are attached as Exhibit 23, noted in paragraph 25 of this declaration.

27. Attached hereto as Exhibit 25 is a copy of a draft memorandum from Lester Ranson to Michael Johnston, dated January 4, 2001, produced from Bank of America's files (BOA-DAVID-UR-00330831-00330833).

28. Attached hereto as Exhibit 26 is a copy of a draft memorandum from Lester Ranson to Michael Johnston, dated December 18, 2000, produced from Bank of America's files (BOA-DAVID2-00376601-00376603).

29. Attached hereto as Exhibit 27 is a copy of a draft memorandum from Lestor Ranson to Michael Johnston, dated January 3, 2001, produced from Bank of America's files (BOA-DAVID 01498229-01498231).

30. Attached hereto as Exhibit 28 are true and correct copies of excerpts from the Deposition of Owen G. Shell in the above-captioned matter.

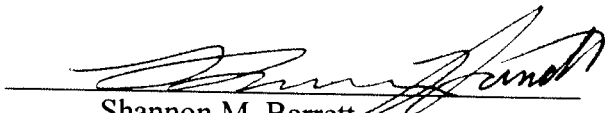
31. Attached hereto as Exhibit 29 are true and correct copies of excerpts from the 30(b)(6) Deposition of Katherine Dugan in the above-captioned matter.

32. Attached hereto as Exhibit 30 is a copy of a document entitled "Leader Talking Points Regarding the One-Time Transfer," dated June 20, 2000, produced from Bank of America's files (BOA-DAVID-UR-00733961-00733962).

33. Attached hereto as Exhibit 31 is a copy of a document entitled "Key Messages: External Media," dated May 15, 2000, produced from Bank of America's files (BOA-DAVID-UR-00733963-00733979).

34. Attached hereto as Exhibit 32 is a copy of a document entitled, "Q&As," produced from Bank of America's files (BOA-DAVID-00257099-00257100).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration is executed this 29th day of December 2010 in Washington, DC.


Shannon M. Barrett